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No. 87-513

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

MANVILLE FOREST PRODUCTS CORPORATION,
Petitioner,

vs.

MELVIN EVANS, ET AL.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL SECOND CIRCUIT, STATE OF LOUISIANA

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
Table of Authorities	ii
Summary of Argument	1
Argument	
I. The Opposition Arguments by Plaintiffs are not Persuasive	2
II. Certiorari is Appropriate for the Reasons Previously Advanced by MFPC	4
Conclusion	7

TABLE OF AUTHORITIES

Page

Cases

Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974) 2
Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985) 3
Avco Corp. v. Aero Lodge, I.A.M. & A.W., 390 U.S. 557 (1968) 3
Barrentine v. Arkansas Best-Freight System, 450 U.S. 728 (1981) 2
DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983) 6
Local 174, Teamsters, Chauffeurs, Warehousemen and Helpers v. Lucas Flour Company, 369 U.S. 95 (1962) 3
Textile Workers Union v. Lincoln Mills of Alabama, 353 U.S. 448 (1957) 3
Local 186, United Packinghouse Workers v. Armour and Company, 446 F.2d 610 (6th Cir. 1971) 4,5
National Metalcrafters v. McNeil, 784 F.2d 817 (7th Cir. 1986) [1] 6

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[1] In the Petition for Writ of Certiorari, *National Metalcrafters* was incorrectly cited as having certiorari denied. In fact, no request for certiorari was made. A second *National Metalcrafters* case did have certiorari denied and was incorrectly cross-referenced by Shephards with the above case.

Schneider v. Electric Auto-Lite Company,
456 F.2d 366 (6th Cir. 1972) 4

Statutes

Labor Management Relations Act, Section 301,
61 Stat. 156, 29 U.S.C. § 185 1,3,4,5,6
National Labor Relations Act, Section 10(b),
49 Stat. 453, 29 U.S.C. § 160(b) 5
La. R.S. 23:640 2,6

SUMMARY OF ARGUMENT

The arguments raised by plaintiffs are inapposite and erroneous. Manville Forest Products Corporation (herein "MFPC") does not present or pursue an issue of constitutionality. Plaintiffs' citations relative to conflicting policies of federal laws are not precedential in this matter as they do not deal with preemption of state law by federal law. Plaintiffs' action is clearly a suit under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (herein "Section 301"), since plaintiffs' complaint alleges vacation pay due under a labor agreement, and the Court of Appeal, Second Circuit, State of Louisiana (herein "the Louisiana Second Circuit") specifically referred to and interpreted the labor agreement. The Louisiana Second Circuit's finding that under the labor agreement the plaintiffs have "no right to vacation wages" is controlling in this matter.

Plaintiffs have presented no case or argument establishing that the doctrine of preemption is not applicable. The only ground for avoidance of preemption argued by plaintiffs is the contention that their action is not one for breach of a labor agreement. This contention is without merit.

ARGUMENT

I.
The Opposition Arguments by Plaintiffs are not Persuasive.

Plaintiff contends that the Petition for a Writ of Certiorari raises an issue of constitutionality. Although the "Supremacy Clause" of the United States Constitution [2] is the logical cornerstone of the doctrine of preemption, MFPC does not contend that *La. R.S.* 23:640 is unconstitutional. MFPC merely contends that its use by the Louisiana Second Circuit as the basis of vacation eligibility or entitlement here was erroneous because it was used as a substitute for the terms of a labor agreement which, under federal law, should be held to preempt state law.

MFPC has previously addressed plaintiffs' contention that *Barrentine v. Arkansas-Best Freight System*, 450 U.S. 728 (1981) is controlling in this case. MFPC cites *Barrentine* at footnote four of its Petition for a Writ of Certiorari. Any "line of cases" referred to by plaintiffs under *Barrentine* deal with the issue of the applicability and validity of arbitration awards which purport to resolve issues of *federal* law. See *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974). Those cases are not similar to the case here and have no precedential value. They do not turn on preemption of state law by federal law, but merely resolve issues arising by virtue of conflicting doctrines of federal law.

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[2] United States Constitution, Article VI.

Plaintiffs' response to the preemption argument is to contend that they do not rely upon a breach of the labor agreement. Their complaint, however, alleges that "[u]nder the terms of the Collective Bargaining Agreement in force between Petitioner's Union ... and Defendant ... Petitioners are entitled to vacation pay from Defendant." (Petition for a Writ of Certiorari, p. A-26). [3] Further, the Louisiana Second Circuit held that "[i]n order to resolve the issues we have had to look at the nature of the right of the plaintiffs asserted and at the appropriate provisions of the agreement." The Louisiana Second Circuit went on to interpret the contract under principles of state law. The Louisiana Second Circuit specifically declined to utilize federal law developed under Section 301. The Louisiana Second Circuit did not apply the doctrine of federal preemption and in failing to do so it erred. Simply put, state law is not an independent source of private rights in suits brought "under the terms of [a] Collective Bargaining Agreement." See *Allis-Chalmers Corp. v. Lueck,* 471 U.S. 202 (1985); *Avco Corp. v. Aero Lodge, I.A.M. & A.W.,* 390 U.S. 557 (1968); *Local 174, Teamsters, Chauffeurs, Warehousemen and Helpers v. Lucas Flour Co.,* 369 U.S. 95 (1962); *Textile Workers Union v. Lincoln Mills of Alabama,* 353 U.S. 448 (1957).

Plaintiffs' argument that federal case law requires the plaintiff-employees to be paid vacation pay is contrary to the specific, factual holding of the Louisiana Second Circuit that, under the plain meaning of the labor agreement, "no vacation pay is due." (Petition for a Writ of Certiorari,

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[3] References to the Appendix of the previously filed Petition for a Writ of Certiorari are made hereafter in this manner.

p. A-6). The court in *Local 186, United Packinghouse Workers v. Armour and Company,* 446 F.2d 610 (6th Cir. 1971), cited by plaintiffs as support for this argument, based its decision on the fact that the contract there was ambiguous because it did not set a definite "eligibility date." Here, the contract clearly provides, and the Louisiana Second Circuit held that only employees employed on January 1, are "entitled" to vacation. In *Schneider v. Electric Auto-Lite Company,* 456 F.2d 366 (6th Cir., 1972), also cited by plaintiffs, the clause was different from the one here and a *pro rata* share of vacation was found due. The court there specifically held, however, that "Wisconsin law is inapplicable." *Id.,* p. 371. That case, therefore, supports the argument of MFPC that state law contract interpretation is preempted by federal law in breach of labor agreement cases under Section 301.

II.

Certiorari is Appropriate for the Reasons Previously Advanced by MFPC.

Petitioner MFPC has asserted two theoretical bases for this Court's exercise of the discretionary Writ of Certiorari. First, the decision of the Louisiana Second Circuit not to apply preemption to this case is in derogation of the prior preemption decisions of this Court in the two following particulars: (1) it imposes state law principles of contract interpretation to the exclusion of the explicit terms of the labor agreement which are due to be interpreted under federal, not state, principles of contract interpretation;

and (2) it applies a state statute of limitations to a complaint alleging breach of a labor contract rather than the statute of limitations at 29 U.S.C. § 160(b) which has specifically been deemed applicable by this Court to actions such as the one here. Second, the decision is in direct contravention of a decision by the United States Court of Appeals for the Seventh Circuit intepreting a similar state statute and because of the nationwide prevalence of such state statutes, this Court's resolution of the conflict is necessary to eliminate the exising dichotomy of authority.

Plaintiff-employees have mounted no challenge in their brief to the reasons asserted by MFPC for granting the Writ of Certiorari. Neither does plaintiffs' brief defend the rationale upon which the decision of the Louisiana Second Circuit is based. Plaintiffs seek in their brief to vindicate the correctness of the decision of the Louisiana Second Circuit by application of various state and federal cases from lower courts on points not relied on by the Louisiana Second Circuit. Plaintiffs do not address the basic rationale of MFPC's petition which is that their state action is preempted by Section 301 under the decisions of this Court.

At least one argument by plaintiffs appears to enhance the grant of a Writ of Certiorari because it admits that a split of authority exists between the various United States Courts of Appeal in regard to the application of state statutory and common law to vacation pay claims arising under collective bargaining agreements. If the court in *Local 186, United Packinghouse Workers v. Armour and*

Company, id., in fact based its decision on state contract law,[4] as plaintiff appears to argue, that fact merely underscores that a split of authority exists on this issue which is one of the three specific grounds upon which a Writ of Certiorari is sought by MFPC.

In summary, plaintiffs show no reason why a Writ of Certiorari should not be granted. Clearly the Louisiana Second Circuit held that federal substantive law, developed in suits under Section 301, which would require the contract language to control, was not applicable. The Louisiana Second Circuit specifically held that "under the terms of Art. XVII of the Agreement, the plaintiffs have no right to vacation wages." (MFPC Petition for a Writ of Certiorari, p. A-6). The Louisiana Second Circuit held, however, that a "conflicting state law" controlled rather than the contract language and that the state statute of limitations was applicable rather than the federal limitations period required by *DelCostello v. International Brotherhood of Teamsters,* 462 U.S. 151 (1983). The Louisiana Second Circuit decision ignores the principle of preemption and, contrary to the holding in *National Metalcrafters v. McNeil, id.,* subordinates federal law under Section 301 to the state statute at *La. R.S.* 23:640.

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[4] Plaintiffs' brief is ambiguous on the issue of whether or not this case turns on state contract law principles or federal "common law." A fair reading of the case would indicate that the court functioned as an arbitrator and applied "federal" contract interpretation criteria rather than state law. If, however, as plaintiffs contend, state law was applied to defeat vacation eligibility, the decision is contrary to the decision of the United States Court of Appeals for the Seventh Circuit in *National Metalcrafters v. McNeil,* 748 F.2d 817 (7th Cir. 1986).

CONCLUSION

For the reasons set forth above and previously in this matter, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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